

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-NF-113
	)	
Hoffman Communications, Incorporated	)	NAL/Acct. No. 200232640008
Licensee of WGGM and Owner of Antenna	)	
Structures 1040995, 1040996 and 1040997 in	)	FRN 5011671
Chester, Virginia	)	
Alexandria, Virginia	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** September 30, 2002

By the Enforcement Bureau, Norfolk Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Hoffman Communications, Incorporated (“HCI”), licensee of AM Station WGGM and owner of the cited antenna structures, apparently liable for a forfeiture in the amount of twenty-one-thousand dollars (\$21,000) for willful and repeated violations of Sections 73.49, 17.21 and 73.1745(a) of the Commission’s Rules (“Rules”).<sup>1</sup> Specifically, we find HCI apparently liable for failing to maintain effective fencing around its antenna structures (“towers”), for failing to install prescribed lighting, and for exceeding authorized nighttime power limits.

**II. BACKGROUND**

2. HCI has a license for WGGM to broadcast with 10.5 and 1.08 kilowatts during the day and night, respectively, on 0.820 MHz to the community of Chester, Virginia. The license for WGGM limits field strength levels at three locations during the day and at three others during the night. Its three towers are located at the North American Datum 27 latitudes and longitudes of North 37-22-55 & West 077-25-43, North 37-22-54 & West 077-25-40 and North 37-22-53 & West 077-25-38. All three towers are taller than 61 meters above ground; all are registered; and all have a prescription for painting and lighting as specified FAA Circular Number 70/7460-1J Chapters 3, 4, 5, and 13.

3. On April 12, 1999, the Commission’s Norfolk Office released a Notice of Violation to HCI regarding the operations of WGGM citing, *inter alia*, violations of Sections 17.21 and 73.49. A Norfolk Office agent observed the violations on March 11, 1999.

4. On August 19, and August 20, 2002, the same agent again observed HCI’s WGGM operations and facilities in Chester, Virginia. On both days while WGGM was broadcasting with its three towers, the fencing around the base of each antenna was ineffective. Whole sections of fencing around two of the towers were down while fence pickets around another were missing or separated. With the exception of thick brush around one tower, the condition of all three fences allowed unobstructed access

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<sup>1</sup> 47 C.F.R. §§ 73.49, 17.21 and 73.1745(a).

to the base of the energized towers.

5. On August 19, 2002, the agent observed two of HCI's structures without the installation of lighting. After sunset, he noted that the two towers failed to exhibit lighting. He made the same observations on August 20, 2002.

6. After sunset on August 19, and on August 20, 2002, the agent made field strength measurements at the monitoring points specified in the WGGM license. On both nights at two of the three nighttime monitoring point locations, WGGM exceeded field strength limits by more than 150% of the values specified in its license.

7. In response to the agent's request for information that might mitigate the noted violations, HCI sent the Norfolk Office an email, a letter and a fax on August 21, August 22, and on September 3, 2002, respectively. HCI stated that it had ceased its nighttime operations and that it received an estimate to repair fencing. Concerning its two towers without installed lighting, HCI wrote that it contacted its consultant who thought that a mistake was made by the company HCI hired to register its towers. HCI's response contained several pages from the FAA and a drawing of the two towers without lighting, but it submitted nothing to suggest that lighting was not required.

### III. DISCUSSION

8. Section 73.49 requires licensees to provide locked and effective fencing around antenna structures with radio frequency potential at their bases. On August 19 and 20, 2002, WGGM's three antenna structures were energized for transmitting without fencing that would obstruct access to the base of each tower.

9. Section 17.21(a) requires tower owners to paint and light their towers when they exceed 60.96 meters above ground. HCI's towers exceeded 60.96 meters in height above ground and were required to exhibit painting and lighting pursuant to the towers' registrations and FAA specifications. On August 19 and 20, 2002, two of HCI's three WGGM towers were without any installation of lighting.

10. Section 73.1745(a) prohibits licensees from operating at times, or with modes or power, other than those specified and made part of the license. After sunset on August 19 and 20, 2002, WGGM exceeded field strength limits at two nighttime monitoring points by over 150%.

11. Based on the evidence before us, we find HCI, willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Sections

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>3</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

73.49, 17.21 and 73.1745(a) of the Rules by failing to maintain effective fencing, by failing to install prescribed lighting and for exceeding nighttime power limits.

12. Pursuant to Section 1.80(b)(4) of the Rules,<sup>4</sup> the base forfeiture amount for failing to maintain effective fencing is \$7,000; for failing to install prescribed lighting it is \$10,000 and for exceeding authorized power limits it is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup> Considering the entire record and applying the factors listed above, this case warrants a \$21,000 forfeiture.

#### **IV. ORDERING CLAUSES**

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> HCI is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-one thousand dollars (\$21,000) for willful and repeated violation of Sections 73.49, 17.21 and 73.1745(a) of the Rules by failing to maintain effective fencing, by failing to install prescribed lighting and for exceeding power limits.

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, HCI SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

16. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2)

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<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>8</sup> See 47 C.F.R. § 1.1914.

financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Hoffman Communications, Incorporated, 2461 Eisenhower Avenue, Alexandria, VA, 22331.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Husnay  
Resident Agent, Norfolk Office, Enforcement Bureau

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